

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, March 1, 2006

Division Two

A110244 – The People v. Earl Leslie Heltsley.

The judgment of conviction is affirmed. Busch, J.* We Concur: Kline, P.J., Haerle, J.
(Not for Publication)

Division Three

A109721 – Clifford J. Johnson v. Coldwell Banker Real Estate Corporation et al.

Order Modifying Opinion and Denying Rehearing and no change in judgment. The Court: It is ordered that the opinion filed on January 30, 2006, be modified as follows: (See Order) There is no change in the judgment. Appellant's petition for rehearing is denied. McGuiness, P.J.

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, March 2, 2006

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J. and Margulies, J.; and P. Aguilar, Deputy Clerk.

- A108186 People
 v.
 Kenneth Michael Stanton
Cause called and argued by Omar Figueroa, counsel for appellant, and Dorian Jung, counsel for respondent. Cause ordered submitted.
- A108618 Shawn Mooney
 v.
 William S. Caspari et al.
Cause called and argued by Jon Eisenberg, counsel for appellants, and Daniel Smith, counsel for respondent. Cause ordered submitted.
- A109354 Janice L. Ross et al.
 v.
 CMR Mortgage Fund
Cause called and argued by Jeffrey Trowbridge, counsel for appellant, and David Baer, counsel for respondents. Cause ordered submitted.
- A110311 Rose M. Bell et al.
 v.
 Farmers Insurance Exchange
Cause called and argued by Kenneth Sugarman, counsel for appellants, and Paul Cane, counsel for respondent. Cause ordered submitted.

A109147 Dianne Loretta Sommerfeld

v.

Director of the Department of Motor Vehicles

Cause called and argued by Mary Cain-Simon, counsel for appellant, and by telephone, Richard Targow, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, March 2, 2006

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Swager, J., Margulies, J., and F. Abad, Deputy Clerk.

A108978 In re Darien A.
 People
 v.
 Darien A.
Cause called and argued by V. Elizabeth Grayson, counsel for appellant via teleconferencing, and Michael Banister, counsel for respondent. Cause ordered submitted.

A109907 The McGraw-Hill Companies, Inc.,
 v.
 Franchise Tax Board.
Cause called and argued by Jeffrey Vesely, counsel for appellant, and Anne Burr, counsel for respondent. Cause ordered submitted.

Justice Marchiano left the bench, and Justice Stein joined the bench and presided over the remainder of the calendar.

A110069 Club Members for an Honest Election,
 v.
 Sierra Club, et al.
Cause called and argued by Jeff Hoffman, counsel for appellant/cross-respondent, and Thomas Burke, counsel for respondent/cross-appellant. Cause ordered submitted.

A109151 Terence Bunton, et al.,
 v.
 Michael Barber, et al.
Cause called and argued by Robert Knox, counsel for appellants, and Peter Brekhus, counsel for respondents. Cause ordered submitted.

Court adjourned.

There were no cases scheduled for oral argument on March 1, 2006.

Thursday, March 2, 2006 (continued)

Division Two

A107754 – The People v. Oscar Beltran.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

Division Three

A111983 and A112770 – U.S. Bank National Association v. James Lane, et al.

By the Court: The unopposed motion to consolidate appeal numbers A111983 and A112770 filed by appellant U.S. Bank National Association is granted for purposes of briefing, oral argument, if any, and decision. Both appeal numbers shall appear on all documents filed in this court. Appellant's consolidated opening brief is due on or before March 29, 2006. McGuiness, P.J.

Division Four

A105940 – The People v. Kenneth Lee Taylor.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

A111318 – The People v. Jaime Alaguna.

The judgment is affirmed. Ruvolo, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication)

Division Five

A109363 – The People v. Phillip H. Brown, Jr.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

A109779 – The People v. Bobbie Hibshman.

The order revoking Hibshman's probation is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

Friday, March 3, 2006

Division One

A111696 – The People v. Nicholas Troy Brooks.

There are no meritorious issues to be argued on appeal. The judgment is affirmed.
Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

Division Two

A108091 – In re Matthew M., a Person Coming Under the Juvenile Court Law. The People v. Matthew M.

The orders made by the juvenile court are affirmed. Ruvolo, J.* We Concur: Kline, P.J., Lambden, J. (Not for Publication)

* Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, March 6, 2006

Division One

A109338 – Michael C. Liranzo v. Randall Liranzo et al.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

A108327 – The People v. Lyle Lynn Cooper.

We accordingly order the abstract of judgment modified to reflect the actual sentence of two years imposed by the sentencing court on Count 2. (*People v. Avila* (1999) 75 Cal.App.4th 416, 424.) As so modified, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

A108260 – The People v. Daniel Chase.

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication)

Division Two

A107996 – The People v. Tri Dung Nguyen.

The judgment of conviction is affirmed. Busch, J.* We Concur: Kline, P.J., Lambden, J. (Not for Publication)

Division Five

A110631 – Conservatorship of the Estate of Kevin Kane. Barbara Simon, as Conservator, etc.

The order appealed from is reversed, and the matter is remanded to the trial court with instructions to reconsider the petition in light of the views expressed in this opinion. Jones, P.J. We Concur: Simons, J., Gemello, J. (Certified for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, March 7, 2006

Division Two

A110208 – Florence Cervený v. Jim Gotovac et al.

The judgment is affirmed. Cervený is awarded costs on appeal. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

Division Four

A108948 – Donald Reeser v. City and County of San Francisco.

The judgment is affirmed. Respondent CCSF is awarded costs on appeal. Ruvolo, J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication)

Division Five

A107654 and A108720 – In re Audrianna B. et al., Persons Coming Under the Juvenile Court Law. Social Services Agency v. Bethany K. et al.

The July 21, 2004 order terminating Mother's parental rights as to Ilias is affirmed. The appeal from the October 19, 2004 order denying Mother's section 388 petition is dismissed. The August 24, 2004 order continuing the section 366.26 hearing as to Audrianna for 180 days for the Agency to make efforts to locate an appropriate adoptive family for her is reversed. We order a limited remand as follows: The juvenile court is directed to order the Agency to give notice to the relevant tribes pursuant to ICWA requirements and related state law. Once the court determines there has been substantial compliance with notice requirements, it shall make a finding as to whether Audrianna is an Indian child. (See rule 1439(g)(5).) If at any time within 60 days after notice has been given there is a determinative response that Audrianna is or is not an Indian child, the court shall find in accordance with that response. (Rule 1439(g)(1), (4).) If there is no response, the court shall find that Audrianna is not an Indian child. (Rule 1439(f)(6).) If the court finds that Audrianna is not an Indian child, it shall then reinstate the August 24, 2004 order. If the court finds that Audrianna is an Indian child, it shall set a new section 366.26 hearing and conduct all further proceedings in compliance with the ICWA and related federal and state law. (See *In re Jonathon S.*, *supra*, 129 Cal. App.4th at pp.342-343.) Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication)

Wednesday, March 8, 2006

Division Two

A108690 – The People v. David McDonald.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J.* (Certified for Publication)

Division Five

A108241 and A109393 – DCM Construction & Services, Inc. v. Medhi Mohammadian et al.

The appeal is dismissed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

* Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, March 9, 2006

Division One

A109478 – The People v. Tracy F. Alford.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Certified for Partial Publication)

A109647 – The People v. Jeffrey D. Pole.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

Division Two

A111001 – The People v. John West.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

A108585 – The People v. Fernando Guanill.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

Division Three

A109948 – Mary E. Crighton Delaura, as Trustee, etc. v. James Beckett.

Order Certifying Opinion for Publication. The Court: The opinion in the above-entitled matter filed on February 7, 2006, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered. Parrilli, Acting P.J. (Certified for Publication)

Division Five

A108542 – The People v. Erick Laton Stewart, Sr.

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

Friday, March 10, 2006

Division One

**A111135 – In re Ryan O., a Person Coming Under the Juvenile Court Law.
Alameda County Social Services Agency v. Nancy M.**

The appeal is dismissed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication)

A111112 – In re John D., a Person Coming Under the Juvenile Court Law. The People v. John D.

The jurisdictional and dispositional orders are affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

A108207 – The People of the State of California v. Timothy Alexander.

Alexander's appeal, to the extent it raises claims based on error in the jury instructions and prosecutorial misconduct, has become moot. In all other respects the recommitment order entered September 24, 2004, is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

Division Two

A112931 – Malekpour Maleki v. The Superior Court of Marin County; Ann Marie Maegher.

By the Court*: We have reached our decision after notice to all parties that we might act by issuing a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180.) The entitlement to relief is obvious. (*See Alexander v. Superior Court* (1993) 5 Cal.4th 1218; *Ng v. Superior Court* (1992) 4 Cal.4th 29.) Accordingly, let a peremptory writ of mandate issue commanding respondent court to vacate its order striking petitioner's challenge pursuant to section 170.6(a)(2), and to enter a new order granting that challenge. The temporary stay of proceedings previously imposed is hereby dissolved. In the interests of justice, the parties shall bear their own costs. (Cal. Rules of Court, rule 56(l).) Our decision is final as to this court immediately. (Cal. Rules of Court, rule 24(b)(3).)

* Before Haerle, Acting P.J., Lambden, J., Busch, J. Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, § 6 of the California Constitution).

Friday, March 10, 2006 (continued)

Division Three

A109935 – In re Ken T., a Person Coming under the Juvenile Court Law. The People v. Ken T.

A113158 – In re Ken T., on Habeas Corpus.

At petitioner's request, the petition for a writ of habeas corpus, In re Ken T., A113158, is consolidated with the appeal in People v. Ken T., A109935. This court's consideration of the request for judicial notice and this court's determination of whether to issue an order to show cause will be deferred until the issues on the appeal have been considered. The Attorney General is directed to furnish opposition to the petition on or before the date of filing of the respondent's brief in A109935. Petitioner's response, if any, must be filed on or before the date of filing of the appellant's reply brief in A109935.

A108245 – John F. Hernandez, et al., v. Whitman Corporation, et al.

By the Court: The respondent's petition for rehearing and motion for judicial notice are denied. McGuiness, P.J.

Division Four

A108301 – Frances Boyle et al., v. Certaineed Corporation.

The judgment is reversed and the matter remanded to the trial court for proceedings consistent with the views expressed in this opinion. Appellants shall recover their costs on appeal upon timely application in the trial court. (Cal. Rules of Court, rule 27.) Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Certified for Publication)

Friday, March 10, 2006 (continued)

Division Five

A109050 – The People v. Thomas Erdulfo Crespo, III.

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication)

A110513 – In re Ludwig G., a Person Coming Under the Juvenile Court Law. The People v. Ludwig G.

The disposition is affirmed. Jones, P.J. We Concur: Simons, J., Reardon, J.* (Not for Publication)

A109484 and A109561 – Gilbert Granado v. The City of San Carlos.

The judgment confirming the arbitration award is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication)

A111266 – Benjamin F. Herman, III v. Amir Zavieh et al.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, March 13, 2006

Division One

A111742 – The People v. Norman Cedrick Mitchell.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

Division Two

A109203 – The People v. Wilfredo Antonio Bermudez.

The matter is remanded for the superior court to strike the two one-year enhancements resulting from defendant's prior prison terms. The superior court is also directed to consider whether it has discretion under Penal Code section 1170.12, subdivision (a)(6) to impose concurrent sentences and, if so, to decide whether to exercise that discretion. As to defendant's *Romero* motion and motion to suppress, the trial court's rulings are affirmed. Busch, J.* We Concur: Kline, P.J., Haerle, J. (Not for Publication)

Division Five

A109508 – The People v. Ronald Dean Jackson.

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, March 14, 2006

Division One

A109138 – The People v. Renée Denice Moore.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

A108978 – In re Darien A., a Person Coming Under the Juvenile Court Law. The People v. Darien A.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

A110996 – In re Marissa S., a Person Coming Under the Juvenile Court Law. Mendocino County Department of Social Services v. Mario V.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

Division Two

A108445 – The People v. Isreal Stevens.

The judgment is affirmed. Ruvolo, J.* We Concur: Kline, P.J., Haerle, J. (Not for Publication)

A105815 – Ambreen Ahsan Khawaja et al., v. Rafi Khawaja.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication)

A112766 – In re Christopher G., a Person Coming Under the Juvenile Court Law. Jennifer Z. v. The Superior Court of San Mateo County; San Mateo County Human Services Agency, R.P.I.

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888; § 366.26, subd. (l)(1) [precluding further challenge to these orders by petitioner in any subsequent appeal].) The request for stay of the section 366.26 hearing, which is set for May 2, 2006, is denied, and our decision is final as to this court immediately. (Cal. Rules of Court, rule 24(b)(3).) Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

* Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, March 14, 2006 (continued)

Division Three

A109555 – In re Marriage of Dawn and Shawn Quinlivan. Shawn P. Quinlivan v. Dawn v. Quinlivan.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Tuesday, March 14, 2006

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Sepulveda, J. and Rivera, J.; Ines Calanoc, Deputy Clerk; CHP Officer Aron Ching, Bailiff.

- A109326 David Dezerega et al.,
 v.
 Jason Meggs.
Cause called. David Beauvais argued for appellant Meggs. Fred Feller argued for respondents. Cause submitted.
- A107542 Salvio Pacheco Square,
A108372 v.
 Secure Computing Corporation.
Cause called. Dean Paik argued for appellant Secure Computing Corporation. Ellen Cirangle argued for respondent. Cause submitted.
- A110977 Paul Carella,
 v.
 eBay, Inc.
Cause called. Daniel Edelman argued for appellant Paul Carella. George Yuhas argued for respondent. Cause submitted.
- A111888 Wayne & Laurie Charkins et al.,
 v.
 Workers Compensation Appeals Board;
 Paul Hestehauge.
Cause called. Thomas Richard argued for petitioners Wayne & Laurie Charkins, et al. Howard Hibbard argued for respondent. Cause submitted.

The Court recessed at 10:57 a.m.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Tuesday, March 14, 2006

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Ruvolo, P.J., Reardon, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Mindy LaPonte, Bailiff.

A111264 Janice Fenster et al.
 v.
 Tiburon Town Council et al.
 Belvedere Tiburon Library Agency
Cause called. Roger Beers argued for appellants Fenster et al. Gary T. Ragghianti argued for real party in interest. Cause submitted.

A109470 People
 v.
 Peter Irving Hart
Cause called. David Martin argued for appellant Hart. Eric Share argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Ruvolo, P.J., Reardon, J., and Sepulveda, J.

A110438 Douglas P. Smith
 v.
 Greg Ray Berezay
Cause called. William McDevitt argued for appellant Smith. Charles D. Cochran argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Reardon, Acting P.J., Sepulveda, J., and Rivera, J.

A110373 In re Devon F., a minor.
People
v.
Devon F.
Cause called. Jenny Huang argued for appellant Devon F. Michael Banister argued for respondent. Cause submitted.

A112575 Terry S.
v.
Superior Court, Contra Costa County
Contra Costa County Children & Family Services Bureau et al.
Cause called. Anna Gregorian argued for petitioner Terry S. Patricia Lowe argued for real parties in interest. Cause submitted.

The Court adjourned at 3:04 p.m.

Wednesday, March 15, 2006

Division One

A109547 – The People v. Lisa Renee Brown.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

A109488 – Richard Aaron et al., v. Dallas Dunham et al.

The judgment of the trial court is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

A110311 – Rose Bell et al., v. Farmers Insurance Exchange.

The orders subject to appeal are affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Certified for Publication)

A111522 – The People v. Clyde Lee Barron.

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

A111462 – In re Alejandro J., a Person Coming Under the Juvenile Court Law. San Mateo County Human Services Agency v. Vincent J.

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

Division Two

A108221 – Karen Purvis v. Wells Fargo & Company et al.

The trial court's judgment is affirmed. Costs are awarded to Wells Fargo. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

A110404 – The People v. Evelyn Susan Cooper.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, March 15, 2006

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Pollak, J., and Siggins, J.; and B. Robbins, Deputy Clerk.

- A106426 Lincoln Property Company, N.C., Inc.,
 v.
 Travelers Indemnity Company of Illinois, et al.
Cause called and argued by Kevin M. McGuire, counsel for appellant, and Michael W. Melendez, counsel for respondents. Cause ordered submitted.
- A107611 William Crowley,
 v.
 Ronald Pawelczyk.
Cause called and argued by Michael P. Guta, counsel for appellant, and Edward J. Rodzewich, counsel for respondent. Cause ordered submitted.
- A109296 Matthew Akuluze,
 v.
 Oakland Unified School District.
Cause called and argued by Frank S. Moore, counsel for appellant, and Daniel Hoye, counsel for respondent. Cause ordered submitted.
- At this point in the proceedings, Presiding Justice McGuiness left the bench and Justice Parrilli joined the bench. Justice Parrilli presided over the remainder of the morning session.
- A107447 The People,
 v.
 Perfecto Avellaneda.
Cause called and argued by Elisa J. Stewart, counsel for appellant, and Margo Yu, counsel for respondent. Cause ordered submitted.

A105397 Christopher Bakes,
v.
Therese F. Alvillar.
Cause called and argued by Douglas G. Chapman, counsel for appellant, and Ted Scheley, counsel for respondent. Cause ordered submitted.

A109060 Steven Wong,
v.
Ohlone College.
Cause called and argued by Louis D. Silver, counsel for appellant, and John A. Shupe, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, March 15, 2006

Court reconvened at 1:30 p.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Parrilli, J., and Pollak, J.; and B. Robbins, Deputy Clerk.

A108477 Robert K. Malm,
v.
Gary D. Beerbower, et al.
Cause called and argued by Stephen F. O'Neill, counsel for appellant, and John Borba, counsel for respondents. Cause ordered submitted.

At this point in the proceedings, Justice Pollak left the bench and Justice Siggins joined the bench.

A104856 Spatial Corp.,
v.
Autodesk, Inc.
Cause called and argued by Paul Schwartz, counsel for appellant, and Robert Paul Feldman, counsel for respondent. Cause ordered submitted.

A103031 Aram Sohigian, et al.,
v.
The City of Oakland, et al.
Cause called and argued by Mark Clausen, counsel for appellants, and Christopher Kee, counsel for respondents. Cause ordered submitted.

Court adjourned.

Wednesday, March 15, 2006 (continued)

Division Four

A111084 – Phillip E. Anselmo v. Phillip S. Horne.

The record supports the trial court's discretionary denial of his motion to vacate. We affirm. Reardon, J. We Concur: Ruvolo, J., Sepulveda, J. (Not for Publication)

Division Five

A110618 – In re M. P., a Person Coming Under the Juvenile Court Law. San Francisco Department of Human Services v. M.P.

The order of the trial court is affirmed. Reardon, J.* We Concur: Jones, P.J., Gemello, J. (Not for Publication)

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, March 16, 2006

Division One

A108327 – The People v. Lyle Lynn Cooper.

By the Court: The petition for rehearing is denied. Marchiano, P.J.

A111258 – Russell Bloom v. Department of Motor Vehicles.

The judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J.
(Not for Publication)

A109354 – Janice L. Ross et al., v. CMR Mortgage Fund, LLC.

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

Division Two

A109258 – Richard Armstrong v. San Francisco Bay Area Rapid Transit District et al.

The judgment is affirmed. Respondents are awarded their costs on appeal. Ruvolo, J.*
We Concur: Kline, P.J., Lambden, J. (Not for Publication)

A110360 – The People v. Maureen Scarberry.

The judgment of conviction is affirmed. Busch, J.* We Concur: Kline, P.J., Lambden, J.
(Not for Publication)

Division Three

A111612 – In re the Marriage of James Murray and D're Inga Stergios. James M. Murphy v. D're Inga Stergios.

The appeal is dismissed. Stergios shall recover her costs on appeal. Pollak, J. We
Concur: McGuinness, P.J., Parrilli, J. (Not for Publication)

A110692 – The People v. Clarence Bernard Christmas.

The judgment is affirmed. Pollak, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication)

* Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, March 16, 2006 (continued)

Division Four

A110796 – The People v. Randy Dwayne Seeman.

Judgment affirmed. Reardon, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication)

A110571 – Jackie Pieri et al., v. City and County of San Francisco et al.

By the Court: The petition for rehearing filed by plaintiffs and respondents on March 8, 2006, is denied. Plaintiffs and respondents' request for judicial notice filed March 8, 2006, is denied. The written opinion which was filed on February 21, 2006, has been certified for publication pursuant to rule 976(b) of the California Rules of Court, and it is ordered published in the official reports. Ruvolo, P.J. (Certified for Publication)

Division Five

A108678 – Synnex Corpoartion v. Umax Technologies, Inc.

The part of the judgment awarding attorney fees and costs to Umax is vacated and the case is remanded. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

Friday, March 17, 2006

Division One

A108186 – The People v. Kenneth Michael Stanton.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

A106932 – Terence Bunton et al., v. Michael Barber.

Order Modifying Opinion and Denying Rehearing and no change in judgment. The Court: It is ordered that the opinion filed herein on February 15, 2006, be modified as follows: (See Order). There is no change in the judgment. Defendant Michael Barber's petition for rehearing is denied. Margulies, Acting P.J. (Not for Publication)

A108847 – The People v. Curtis Jamell Meeks.

The judgment is modified to stay the sentences for the offenses and enhancements on counts 1 and 3 pursuant to section 654. As so modified, the judgment is affirmed. The trial court is directed to prepare and forward an amended abstract of judgment reflecting these modifications to the Department of Corrections. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication)

Division Three

A109060 – Homes First, LLC v. Gordon King.

The order of dismissal in favor of Gordon King of October 18, 2004, is reversed. The superior court is directed to enter a new order sustaining Gordon King's demurrer to the fourth amended complaint with leave to amend only as to the cause of action for fraud against Gordon King. The parties are to bear their own costs on this appeal. Parrilli, J. We Concur: McGuinness, P.J., Pollak, J. (Not for Publication)

Division Five

A109982 – Suzanne Riggs v. Mark Archacki.

The judgment is affirmed. Reardon, J.* We Concur: Simons, Acting P.J., Gemello, J. (Not for Publication)

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, March 20, 2006

Division Two

A110346 – The People v. Daniel Joseph Pearl.

The judgment of conviction is affirmed. Busch, J.* We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication)

Division Three

A106426 – Lincoln Property Company, N.C., INC. v. The Travelers Indemnity Company et al.

The judgment is affirmed. Travelers shall recover its costs on appeal. Pollak, J. We Concur: McGuinness, P.J., Siggins, J. (Certified for Publication)

A108477 – Robert K. Malm v. Gary D. Beerbower et al.

The judgment is affirmed. Defendants shall recover their costs on appeal. Pollak, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication)

A112751 and A113131 – Anthony Walker v. Charles Walker and Veronica Wiley.

By the Court: The stipulation to consolidate appeal numbers A112751 and A113131 is granted for purposes of briefing, oral argument, if any, and decision. Both appeal numbers shall appear on all documents filed in this court. Appellant's consolidated opening brief shall be due 30 days from the filing of the record in A112751. McGuinness, P.J.

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, March 20, 2006 (continued)

Division Four

A109326 – David DeZerega et al., v. Jason Meggs.

The judgment is affirmed in part and reversed in part, and the case is remanded for proceedings consistent with this opinion. The order awarding attorney fees also is reversed. Each side will bear its own costs on appeal. Sepulveda, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication)

A110373 – In re Devon F., a Person Coming Under the Juvenile Court Law. The People v. Devon F.

The matter is remanded to the juvenile court to exercise its discretion in setting the minor's maximum term of confinement to the Youth Authority, pursuant to Welfare and Institutions Code section 731, subdivision (b). In all other regards, the judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication)

A112575 – Terry S. v. The Superior Court of Contra Costa County; Contra Costa County, Children & Family Services Bureau, R.P.I.

Father's petition for an extraordinary writ is denied on the merits. (§ 366.26, subd. (I); Cal. Rules of Court, rules 1435(b), 1436.5(c).) This decision shall be final immediately. (Cal. Rules of Court, rule 24(b)(3).) The request for a stay of the section 366.26 hearing to be held on April 4, 2006, is denied as moot. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication)

Tuesday, March 21, 2006

Division One

A108246 and A109226 – Allen Harman v. City and County of San Francisco, et al.

By the Court: The petition for rehearing is denied. Marchiano, P.J.

A104051 – The People v. Anthony Ejane Johnson.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

Division Two

A109972 – Renzo Pietrobon v. Marc Libarle.

The judgment is affirmed. Plaintiff shall recover his costs on appeal. Lambden, J. We Concur: Haerle, Acting P.J., Busch, J.* (Certified for Publication)

A105410 – Contemporary Services Corporation, et al., v. The Law Offices of Sean Ellis, et al.

The judgment is affirmed. Each party is to bear their own costs on appeal. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J.* (Not for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Presiding Justice of the Court of Appeal, First Appellate District Division Four, assigned by Chief Justice pursuant to Article VI, section 6 of the California Constitution.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Tuesday, March 21, 2006

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Lambden, J., Officer Chambers and S. Wheeler, Deputy Clerk.

A108956 Judith Murray, et al.,
 v.
 JRW Construction, Inc.
Cause called and argued by James Hanavan, counsel for appellant, and Sunena Sabharwal, counsel for respondents. Cause ordered submitted.

At this point of the proceedings, P.J. Kline left the bench and P.J. Ruvolo* joins the bench for the remainder of the calendar.

*Presiding Justice of Division Four sitting under assignment by the Chief Justice.

A103809 A & J Liquor Co., et al.,
 v.
 State Compensation Insurance Fund.
Cause called and argued by Jerome B. Falk, Jr., counsel for appellants, and Gregory Long, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P.J., Lambden, J., Busch, J.*, Officer Scrivner and S. Wheeler, Deputy Clerk.

*San Francisco Superior Court Judge sitting under assignment by the Chief Justice.

A111098 Michael Dunn,
 v.
 County of Mendocino, et al.
Cause called and argued by Brian Newman, counsel for respondents. No appearance for appellant. Cause ordered submitted.

At this point of the proceedings, P.J. Kline left the bench and J. Haerle joins the bench for the remainder of the calendar.

A111334 Fortrend International, et al.,
v.
Edwin De Silva, et al.
Cause called and argued by Richard Idell, counsel for appellants, and Anthony Russo, counsel for respondents. Cause ordered submitted.

COURT ADJOURNED.

Tuesday, March 21, 2006 (continued)

Division Three

A107611 – William Crowley v. Ronald Pawelczyk.

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication)

A109296 – Matthew Akuluze v. Oakland Unified School District.

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication)

A105397 – Christopher Bakes v. Therese Alvillar et al.

The order is affirmed. Siggins, J. We Concur: Parrilli, Acting P.J., Pollak, J. (Not for Publication)

Division Four

A107888 – City and County of San Francisco v. All Persons Interested in the Matter, Katherine Roberts, Trees not Cars.

-- **Katrherine Roberts, Trees not Cars v. City and County of San Francisco et al.; Music Concourse Community Partnership, R.P.I.**

-- **Save Golden Gate Park et al., v. City and County of San Francisco; Music Concourse Community Partnership, R.P.I.**

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

Division Five

A110076 – The People v. Horace William Chapple.

The order is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

Wednesday, March 22, 2006

Division One

A112708 – Katherine D. v. Humboldt County Superior Court; Humboldt County Department of Health and Human Services et al.

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The section 366.26 hearing is set for April 17, 2006. Therefore, our decision is final in this court immediately. (Cal. Rules of Court, rule 24(b)(3).) Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication)

Division Two

A109139 – The People v. Misael Benitez Ramirez.

The judgment is modified to stay punishment on counts 3 and 5 and is otherwise affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

Division Four

A111888 – California State Automobile Association Inter-Insurance Bureau v. Workers' Compensation Appeals Board and Paul Hestehauge.

The Order and Decision After Reconsideration of the Appeals Board is annulled. Sepulveda, J. We Concur: Ruvolo, P.J., Rivera, J. (Certified for Publication)

Division Five

A111431 – The People v. Deldon Tyus.

The trial court's orders imposing and modifying probation are affirmed. Gemello, J. We Concur: Jones, P.J., Reardon, J.* (Not for Publication)

A110803 – In re Dale R., a Person Coming Under the Juvenile Court Law. Solano County Health and Social Services Agency v. Brenda S.

The order terminating appellant's parental rights is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, March 23, 2006

Division One

A104561 – The People v. Michael John Morales et al.

The judgments are affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

Division Two

A109181 – The People v. Christopher K. Prater.

The judgment is affirmed. Ruvolo, J.* We Concur: Kline, P.J., Lambden, J. (Not for Publication)

Division Three

A110845 – The People v. Elroy Nathaniel Tookes, Jr.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication)

A109670 – The People v. Curt M. Mayer.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication)

A104856 – Spatial Corp. v. Autodesk, Inc., et al.

The judgment is affirmed. Autodesk shall recover its costs on appeal. McGuiness, P.J. We Concur: Parrilli, J., Siggins, J. (Not for Publication)

* Presiding Justice of the Court of Appeal, First Appellate District Division Four, assigned by Chief Justice pursuant to Article VI, section 6 of the California Constitution.

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION FIVE

March 23, 2006

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Gemello, J., and Reardon, Justice Pro Tem, Mary P. Quilez, Deputy Clerk and CHP Officers Mindy La Ponte and Aron Ching, Bailiffs.

- A109921 Barbara K. Crane
 v.
 John C. Crane
 Cause called and argued by Ozra Childs, counsel for appellant and by Kathleen A. McKinley, counsel for respondent. Cause ordered submitted.
- A109642 Continental Insurance Company
 v.
 American Equity Insurance Company
 Cause called and argued by Geoff Robb, counsel for appellant and Thomas Holden, counsel for respondent. Cause ordered submitted.
- A111428 Bruce Kuhlman
 v.
 The New Santana Band
 Cause called and argued by Henry Lederman, counsel for appellant, and by Stephen John Duggan, counsel for respondent. Cause ordered submitted.
- A110230 Priscilla Ayers
 v.
 Chiron Corporation
 Cause called and argued by Charles J. Wisch, counsel for appellant, and by Laurie J. Hepler, counsel for respondent. Cause ordered submitted.
- A109976 Fletcher Clover
 v.
 ESPI Sanjana, et al.
 Cause called and argued by R. Kenneth Bauer, counsel for appellant, and by William S. Ginsberg, counsel for respondent. Cause ordered submitted.
- A110742 The People
 v.
 Finau Dominic Takapu

Cause called and argued by Christopher A. Reed, counsel for appellant, and by Ralph Sivilla, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A109606 Mohamed Othman

v.

Wells Fargo Bank, N.A.

Cause called and argued by Tesfaye Wolde Tsadik, counsel for appellant, and by Paul E. Vallone, counsel for respondent, by teleconference. Cause ordered submitted.

Court adjourned at 12:30 p.m.

Friday, March 24, 2006

Division One

A109147 – Dianne Loretta Sommerfeld v. Department of Motor Vehicles.

The judgment is reversed. The matter is remanded to the superior court with directions to enter a new and different judgment denying the petition for mandate. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

A110069 – Club Members for an Honest Election v. Sierra Club, a California non-profit public benefit corporation, et al.

The order subject to appeal is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Certified for Publication)

Friday, March 24, 2006 (continued)

Division Three

A109668 – The People v. Peter Owen Boldway.

The judgment is affirmed. Pollak, J. We Concur: Parrilli, Acting P.J., Siggins, J. (Not for Publication)

A111304 – The People v. Anthony Astengo.

The judgment is affirmed. Siggins, J. We Concur: Parrilli, Acting P.J., Pollak, J. (Not for Publication)

A108770 – The People v. Lisa Gonzales.

The judgment is affirmed. Parrilli, J. We Concur: McGuinness, P.J., Siggins, J. (Not for Publication)

A109735, A111434 and A112506 – In re Athena H., et al., Persons Coming Under the Juvenile Court Law. Lake County Dept. of Social Services v. Jessica H.; Cynthia H., et al., Objectors and Appellants.

A112930 – In re Jessica H., on Habeas Corpus.

By the Court: Upon the court's own motion, in the interest of judicial economy and good cause appearing therefore, the appeal in docket number A112506 is ordered consolidated with the previously consolidated appeals in docket numbers A109735 and A111434, and the consolidated writ of habeas corpus in docket number A112930, for purposes of briefing, oral argument, if any, and decision. **Counsel for all parties are directed to list all appellate case numbers on any future pleadings.** As a result of this order, respondent's motion to augment the record in appeal number A111434, or for judicial notice, is denied as moot. McGuinness, P.J.

A103031 – Aram Sohigian et al., v. City of Oakland et al.

The court erred in sustaining the demurrer as to the sixth cause. The judgment is reversed as to that claim. The judgment as to the second and seventh causes of action is reversed and remanded with directions to the trial court to dismiss those claims as moot. In all other respects, the judgment is affirmed. Appellants' motion for sanctions is denied. Each party is to bear its own costs on appeal. Siggins, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication)

Friday, March 24, 2006 (continued)

Division Five

A109930 – In re Ricardo G., a Person Coming Under the Juvenile Court Law. The People v. Ricardo G.

The judgment is affirmed. Simons, Acting P.J. We Concur: Gemello, J., Reardon, J.*
(Not for Publication)

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, March 27, 2006

Division One

A109488 – Richard Aaron et al., v. Dallas Dunham et al.

Order Certifying opinion for publication. The Court: The opinion in the above-entitled matter, filed on March 15, 2006, was not certified for publication in the Official Reports. For good cause, it now appears that the opinion should be published in the Official Reports and it is so ordered. Marchiano, P.J. (Certified for Publication)

Division Two

A112629 – The People v. Thane Pouncy.

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Richman, J. (Not for Publication)

A111229 – In re Brandon B., a Person Coming Under the Juvenile Court Law. The People v. Brandon B.

The judgment of the juvenile court is affirmed. Busch, J.* We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication)

A112889 – D.M.F. v. The Superior Court of San Francisco County; San Francisco Department of Human Services, R.P.I.

The petition is denied on the merits. (Cal. Rules of Court, rule 38.1(i)(2).) The request for stay of the section 366.26 hearing, which is set for May 3, 2006, is denied, and our decision is final as to this court immediately. (Cal. Rules of Court, rule 24(b)(3).) Busch, J.* We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, March 27, 2006 (continued)

Division Three

A109549 – The People v. Johnny Vick.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

A110531 – In re I.B., a Person Coming Under the Juvenile Court Law. City and County of San Francisco Department of Human Services v. Lanetra W.

The trial court's order dated April 19, 2005, denying the mother's section 388 petition is affirmed. Parrilli, Acting P.J. We Concur: Pollak, J., Siggins, J. (Not for Publication)

Division Four

A108806 – City of Vacaville et al., v. State Water Resources Control Board; California Coastkeeper Alliance et al., Movants and Appellants.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

Division Five

A110233 – The People v. George Roland.

The trial court is directed to strike the \$200 probation revocation restitution fine imposed under section 1202.44. The judgment is otherwise affirmed. Simons, Acting P.J. We Concur: Gemello, J., Reardon, J.* (Not for Publication)

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, March 28, 2006

Division One

A108308 – James Smith v. City and County of San Francisco et al.

Order Modifying Opinion and Denying Rehearing and no change in judgment. By the Court: It is ordered that the nonpublished opinion filed herein on February 27, 2006, be modified as follows: (See Order) This modification does not change the judgment Both petitions for rehearing are denied. Marchiano, P.J. (Not for Publication)

A109165 – The People v. Ajaibu Kootny Wells.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

Division Two

A106033 – The People v. Steven Olivares.

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J.* (Not for Publication)

A110890 – The People v. Demetrius Jefferson.

Accordingly, the orders revoking appellant's probation and executing previously suspended state prison sentence are affirmed. Kline, P.J. We Concur: Haerle, J., Busch, J.* (Not for Publication)

A110822 – In re Sean M., a Person Coming Under the Juvenile Court Law. The People v. Sean M.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Richman, J. (Not for Publication)

* Presiding Justice of the Court of Appeal, First Appellate District Division Four, assigned by Chief Justice pursuant to Article VI, section 6 of the California Constitution.

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, March 28, 2006 (continued)

Division Two

A108235 – In re the Marriage of Irwin R. Pearlstein and Julie Pearlstein. Irwin R. Pearlstein v. Julie Pearlstein; Contra Costa County Department of Child Support Services, Intervenor and Respondent.

The trial court's order is reversed in part, and this matter is remanded to the trial court for further proceedings consistent with this opinion. Specifically, the trial court shall redetermine Irwin's income for child support purposes for the period from June 1, 2002 through December 31, 2004, in accordance with the principles expressed above, and shall recompute the resulting guideline child support amounts for each year, and resulting arrears, based on the revised figures for Irwin's income. If the court determines that the recomputed guideline child support for the calendar year 2004 exceeds the child's reasonable needs, the court may, in its discretion, reduce the amount of support to be paid, provided the parties agree on the terms of a trust into which Irwin is to pay the excess for the benefit of the child's future educational and other needs. The trial court shall also reconsider the sanctions awarded against Irwin in light of our opinion, and may eliminate, reduce, or reaffirm the award in the exercise of its discretion. Ruvolo, J.* We Concur: Kline, P.J., Haerle, J. (Certified for Partial Publication)

A106686 – The People v. Nicole Marie Oliveira.

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J.* (Not for Publication)

A111743 – The People v. Joel Thomas Vinatieri.

Accordingly, the order revoking appellant's probation and the sentence imposed are affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication)

* Presiding Justice of the Court of Appeal, First Appellate District Division Four, assigned by Chief Justice pursuant to Article VI, section 6 of the California Constitution.

* Presiding Justice of the Court of Appeal, First Appellate District Division Four, assigned by Chief Justice pursuant to Article VI, section 6 of the California Constitution.

Tuesday, March 28, 2006 (continued)

Division Three

A110521 – In re Antoine D., a Person Coming Under the Juvenile Court Law. The People v. Antoine D.

The order denying modification of appellant's CYA commitment is reversed. The case is remanded to the juvenile court, so that it may exercise its jurisdiction and rule on the motion to modify. Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Certified for Publication)

A111657 – In re Raymond C., a Person Coming Under the Juvenile Court Law. The People v. Raymond C.

The order is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication)

A109823 – Steven Wong v. Ohlone College et al.

The order denying the petition for a writ of mandate is affirmed. Parrilli, Acting P.J. I Concur: Siggins, J. (See concurring opinion by Pollak, J.) (Certified for Publication)

Division Four

A105940 – The People v. Kenneth Lee Taylor.

The Court: The petition for rehearing filed by appellant on March 17, 2006, is denied. The opinion filed herein on March 2, 2006, is ordered modified on page 3 at the end of the first full paragraph (beginning "Defendant is also precluded from challenging...") by adding the following footnote: (See Order) There is no change in the judgment. Ruvolo, P.J.

A109475 – The People v. David Richard Raygoza.

Order Modifying Opinion and Denying Rehearing and no change in judgment. The Court: It is ordered that the opinion filed herein on February 28, 2006, be modified as follows: (See Order) There is no change in the judgment. The petition for rehearing is denied. Ruvolo, P.J. (Not for Publication)

A109845 – In re Jerry M., a Person Coming Under the Juvenile Court Law. The People v. Jerry M.

The judgment is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Tuesday, March 28, 2006

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Sepulveda, J.; Ines Calanoc, Deputy Clerk; CHP Officer Aron Ching, Bailiff.

A110788 Joseph Deluca.,
 v.
 Marsha Broquedis.
Cause called. Paige Wickland argued for appellant Joseph Deluca. Bernard Wolf argued for respondent. Cause submitted.

A108680 Brenda L. Samson, et al.,
 v.
 Metalclad Insulation Corporation.
Cause called. Bryce Anderson argued for appellants Brenda Samson et al. Camille Fong argued for respondent. Cause submitted. Sepulveda, J. left the bench after this case.

At this point, the court reconstituted itself to include Ruvolo, P.J., Reardon, J., and Rivera, J.

A109391 Innovative Bank,
 v.
 Lewis diSibio, et al.
Cause called. William Barnes argued for appellants Lewis diSibio et al. Kenneth Wachtel argued for respondent. Cause submitted. Reardon, J. left the bench after this case.

At this point, the court reconstituted itself to include Ruvolo, P.J., Sepulveda, J. and Rivera, J.

A109918 Jack Costenbader,
 v.
 Donald Costenbader, et al.
Cause called. Fran Christy argued via teleconference for appellants Donald Costenbader et al. James Green argued for respondent. Cause submitted. Ruvolo, J. left the bench after this case.

At this point, the court reconstituted itself to include Reardon, P.J., Sepulveda, J. and Rivera, J.

A109390 John Valentine,
 v.
 Leisure Sports Inc.
Cause called. Jennifer Capabianco argued for appellant and cross-respondent Leisure Sports Inc. Ronald Palmeri argued for respondent and cross-appellant. Cause submitted.

A110703 Carol Thomas,
 v.
 Victims Compensation & Government
 Claims Board.
Cause called. Appellant in pro per Carol Thomas argued. Lyn Harlan argued via teleconference for respondent. Cause submitted.

The Court adjourned at 11:15 a.m.

Tuesday, March 28, 2006 (continued)

Division Five

A110300 – The People v. Christopher Beck.

The judgment as to count 4 (receiving stolen property) (§ 496, subd. (a)) is reversed and imposition of sentence on count 1 (second degree burglary) (§ 459) is stayed. The judgment is otherwise affirmed. The trial court is instructed to correct the abstract of judgment consistent with this opinion and to forward a copy of the corrected abstract to the California Department of Corrections. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

Wednesday, March 29, 2006

Division One

A109616 – The People v. Salvatore Davi.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

Division Two

A105757 – The People v. Marques Gomer.

The judgment is affirmed. Ruvolo, J.* We Concur: Kline, P.J., Lambden, J. (Not for Publication)

A109985 – James Richard Olde v. The Superior Court of Contra Costa County; The People, R.P.I.

Let a peremptory writ of mandate issue commanding respondent court to vacate its order finding that a retrospective competency hearing is feasible. The cause is remanded to the trial court with instructions to reopen the feasibility hearing and conduct further proceedings on two issues: (1) whether Odle's trial counsel, William Gagen, has sufficient recollection of non-privileged matters so as to provide affirmative evidence at a retrospective competency hearing on the question of whether Odle understood the nature of the proceedings and was able to assist counsel in the conduct of a defense in a rational manner; and (2) whether Odle is able to participate in a meaningful psychiatric evaluation competency hearing in determining Odle's competency to stand trial in 1983. After conducting these proceedings and considering the evidence received both then and previously, the court should reevaluate whether a retrospective competency hearing is feasible as to petitioner. Haerle, J. I Concur: Lambden, J. (See concurring and dissenting opinion of Kline, P.J.) (Not for Publication)

* Presiding Justice of the Court of Appeal, First Appellate District Division Four, assigned by Chief Justice pursuant to Article VI, section 6 of the California Constitution.

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, March 29, 2006

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Parrilli, J., and Pollak, J.; and J. Alameda, Deputy Clerk.

- A105364 Jane Doe, et al.,
A105870 v.
A107142 Rita Saenz, as Director of California Department of Social Services, et al.
Cause called and argued by Susan Joyce King, counsel for appellants, and Peter Sheehan, counsel for respondents. Cause ordered submitted.
- A107681 Nathalie Cowan, et al.,
A108973 v.
A109677 BDO Seidman, et al.
A109708 Cause called and argued by William P. Donovan, counsel for appellants, and Nancy Fineman and Steven Williams, counsel for respondents. Cause ordered submitted.
- A110139 Gloria Guerra,
A110140 v.
County of Alameda.
Cause called and argued by Gloria Guerra, appellant in propria persona, and Jesper Rasmussen, counsel for respondent. Cause ordered submitted.
- At this point in the proceedings, Presiding Justice McGuiness left the bench and Justice Siggins joined the bench. Justice Parrilli presided over the remainder of the morning session.
- A107947 The People,
v.
Terry Haddix.
Cause called and argued by Barbara Michel, counsel for appellant, via teleconference, and Amy Haddix, counsel for respondent. Cause ordered submitted.

Continued.

A110441 Hillsboro Properties, et al.,
v.
City of Rohnert Park, et al.,
Cause called and argued by R. S. Radford, counsel for appellants, and Michelle Marchetta Kenyon, counsel for respondents. Cause ordered submitted.

A106298 Norman A. McKenzie,
A109894 v.
A109086 Sien Lee.
Cause called. Justice Parrilli addresses the parties and informs them that the matter of the commissioner's disqualification will not be argued today. Cause argued by Sien Lee, appellant in propria persona, and Norman McKenzie, respondent in propria persona. Cause ordered submitted.

Court recessed until 1:30 p.m.

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, March 29, 2006

Court reconvened at 1:30 p.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Parrilli, J., and Siggins, J.; and J. Alameda, Deputy Clerk.

- A109567 Antonio Giusto,
 v.
 City of San Mateo, et al.
Cause called and argued by Peter Brown, counsel for appellants, and Alison Berry-Wilkinson, counsel for respondent. Cause ordered submitted.
- A109966 County of Alameda,
 v.
 Ace Recovery Services, Inc., et al.,
 Access Recovery Group, Inc.
Cause called and argued by Francis Hotchkiss Lewis, counsel for appellant, and Daniel Rapaport, counsel for respondent County of Alameda. Cause ordered submitted.
- A108354 Kendra Lamb, et al.,
A108355 v.
 Wells Fargo Bank,
 Fred Sondheimer.
Cause called and argued by Lawrence Schonbrun, counsel for appellant Fred Sondheimer, James Wheaton, counsel for appellants Consumer Federation of California, et al., Robert Stumpf, counsel for respondent Wells Fargo Bank, and Reuben Yeroushalmi, counsel for respondent Kendra Lamb. Cause ordered submitted.

Court adjourned.

Wednesday, March 29, 2006 (continued)

Division Four

A109491 – Carol Gilbert, Inc. v. Ruby’s Restaurant Group.

The judgment is affirmed insofar as we conclude the listing agreement is valid. That portion of the judgment awarding CGI the full commission is reversed. On remand, the trial court is directed to award CGI a termination commission in the amount of \$25,000, plus prejudgment interest from March 15, 2002. The parties shall bear their own costs on appeal. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

A101719 and A104661 – In re the Marriage of Anna and Maciej Jan Kieturakis. Anna Kieturakis v. Maciej Jan Kieturakis.

The orders on the motion to set aside the marital settlement agreement, and on the motion for modification of support and for attorney fees, are affirmed. The parties will bear their own costs on appeal. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Certified for Partial Publication)

Division Five

A104559 – The People v. Eric Rogers et al.

Order Modifying Opinion and Denying Rehearing and Motion to Augment, no change in judgment. By the Court: It is ordered that the opinion filed February 27, 2006 be modified by replacing the first paragraph on page 7 and footnote 4 with the following: (See Order) Appellant’s petitions for rehearing and motions to augment are denied. There is no change in the judgment. Jones, P.J. (Not for Publication)

A111146 – The People v. Wayne Joseph Brieder.

There are no arguable issues. The judgment is affirmed. Simons, Acting P.J. We Concur: Gemello, J., Reardon, J.* (Not for Publication)

A109642 – Continental Insurance Company v. American Equity Insurance Company.

Because American Equity’s duty to defend was never triggered, it had no obligation to contribute to the cost of Muldoon’s defense. (*Community Redevelopment Agency v. Aetna Casualty & Surety Co.*, *supra*, 50 Cal.App.4th at pp. 332, 342.) Accordingly, the judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, March 30, 2006

Division One

A109591 – The People v. Grant Curtis Meyer.

The order revoking and reinstating probation is reversed and the matter is remanded to the trial court for further proceedings in accordance with the due process requirement of formal notice of a motion to revoke probation, as well as in accordance with all requirements of procedural and substantive due process. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

A106402 – The People v. Ivan Ray Carter, Jr.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

A109907 – The McGraw-Hill Companies, Inc. v. Franchise Tax Board.

The judgment is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

Division Two

A108911 – Paul Andrews et al., v. Foster Wheeler LLC.

The judgment is affirmed. Foster Wheeler is awarded costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Certified for Publication)

A110429 – The People v. Isidro Hernandez Tafolla.

The judgment is affirmed. Haerle, Acting P.J.. We Concur: Lambden, J., Ruvolo, J.* (Not for Publication)

A103809 – A&J Liquor Co. et al., v. State Compensation Insurance Fund.

The judgment is affirmed. Costs on appeal are awarded to SCIF. Ruvolo, J.* We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication)

A110862 – In re Bennie D., a Person Coming Under the Juvenile Court Law. The People v. Bennie D.

The dispositional order is affirmed. Richman, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

* Presiding Justice of the Court of Appeal, First Appellate District Division Four, assigned by Chief Justice pursuant to Article VI, section 6 of the California Constitution.

* Presiding Justice of the Court of Appeal, First Appellate District Division Four, assigned by Chief Justice pursuant to Article VI, section 6 of the California Constitution.

Thursday, March 30, 2006 (continued)

Division Three

A109670 – The People v. Curt M. Mayer.

The Court: The petition for rehearing is denied. McGuinness, P.J.

A109966 – County of Alameda v. Ace Recovery Services, Inc., et al.; Access Recovery Group, Inc., Third Party Claimant and Appellant.

The judgment is affirmed. Siggins, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication)

A107947 – The People v. Terry Haddix.

The judgment is affirmed. Siggins, J. We Concur: Parrilli, Acting P.J., Pollak, J. (Not for Publication)

A111003 – The People v. Franz Gonzales.

The judgment is affirmed. McGuinness, P.J. We Concur: Pollak, J., Siggins, J. (Not for Publication)

A110139 and A110140 – Gloria Guerra v. County of Alameda et al.

The judgment is affirmed. Respondents shall recover their costs on appeal. McGuinness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

A110288 – The People v. Joaquin Rodriguez.

A112320 – In re Joaquin Rodriguez, on Habeas Corpus.

The judgment of conviction in case number A110288 is reversed and the matter is remanded for further proceedings. The petition for habeas corpus in case number A112320 is denied as moot. McGuinness, P.J. We Concur: Pollak, J., Siggins, J. (Not for Publication)

A109567 – Antonio Giusto v. City of San Mateo et al.

The judgment in favor of Giusto is affirmed. Costs are awarded to plaintiff Giusto. Parrilli, J. We Concur: McGuinness, P.J., Siggins, J. (Not for Publication)

A106298, A107867, A109086 and A109894 – Norman A. McKenzie v. Sien Lee.

In A106298, the court's order of January 27, 2004 and February 18, 2004 regarding attorney fees are affirmed. In A107867, the court's July 30, 2004 order modifying child support is affirmed. A109086 is dismissed. In A109894, the court's order of February 10, 2005 regarding the parties' requests for sanctions is affirmed. Each party to bear their own costs in these appeals. Siggins, J. We Concur: Parrilli, Acting P.J., Pollak, J. (Not for Publication)

Thursday, March 30, 2006 (continued)

Division Four

A110703 – Carol Thomas v. Victim Compensation and Government Claims Board.

The order denying Thomas's petition for writ of administrative mandate is affirmed.
Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication)

A109373 – The People v. Whitney N. Dase.

The judgment is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication)

Division Five

A111454 – In re Richard K., a Person Coming Under the Juvenile Court Law. The People v. Richard K.

The dispositional order is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication)

A108687 – The People v. Charles Leon Thomas.

The trial court is ordered to prepare and to forward to the Department of Corrections an amended abstract of judgment reducing appellant's determinate sentence from 113 years to 111 years. In all other respects, the judgment is affirmed. Jones, P.J. We Concur: Gemello, J., Reardon, J.* (Not for Publication)

A108442 – The People v. Hoa Trung Khuu.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Reardon, J.* (Not for Publication)

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.